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Supreme Court of the United States

October Term, 1948

No. 121 Miscellaneous

SAMUEL TAYLOR,

Petitioner,

vs.

TENNYSON DENNIS, Warden Alabama State Penitentiary, Kilby, Alabama,

Respondent.

PETITION FOR REHEARING AND FURTHER RELIEF

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PETITION FOR REHEARING AND FURTHER RELIEF

To the Honorable Chief Justice of the United States and the Justices of the Supreme Court of the United States:

Petitioner respectfully presents this petition pursuant to Rule 33 of the Rules of this Court for a rehearing of the above-entitled cause decided on the 7th day of February, 1949, by an evenly divided Court of eight (8) Justices. Petitioner respectfully submits the following reason why the relief prayed for should be granted:

On November 19, 1946, petitioner was sentenced to death by electrocution upon a conviction of rape in the Circuit Court of Mobile County, Alabama, which judgment was affirmed by the Supreme Court of Alabama on April 24, 1947. *Taylor* v. *State*, 249 Ala. 130, 30 So. (2d) 256. On November 13, 1947, that Court denied petitioner permission to file a petition for writ of error *coram nobis* in the trial

court, *Ex Parte Taylor,* 249 Ala. 670, 32 So. (2d) 659, which decision was subsequently affirmed by this Court. *Taylor* v. *Alabama,* — U. S. —, 92 L. ed. (Adv. Op. 1394).

In the majority opinion of this Court it was made clear that the review of the judgment was limited to the procedural question of whether or not the *coram nobis* remedy as used in Alabama denied petitioner due process of law. It was held that the procedure was in conformity with the due process clause and that the Supreme Court of Alabama did not deny petitioner due process by refusing permission to file for *coram nobis* after taking into consideration the entire record of the original trial along with certain photographs produced by the State of Alabama and supported by affidavit. The majority opinion, however, was careful to point out that: "If the new petition (seeking permission to file petition for writ of error *coram nobis*) and its supporting affidavits stood alone or had to be accepted as true, the issue would be materially different from what it is." *Taylor* v. *Alabama,* 92 L. ed. (Adv. Op.) at page 1401.

Mr. Justice FRANKFURTER in concurring pointed out that: "In reaching such a conclusion the Supreme Court of Alabama was entitled to consider the circumstances of the original trial, the manner of its conduct by the trial judge, the professional ability with which the defendant was represented, the behavior of the accused throughout the proceedings, and, in the light of all these circumstances, the weight to be attached to the affidavits on which his present petition is based." Mr. Justice FRANKFURTER concluded: "But this merely carries me to sustaining the judgment of the Alabama Supreme Court. There is not now before us any right that the petitioner may have under the Judicial Code to bring an independent habeas corpus proceeding in the District Court of the United States."

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Mr. Justice MURPHY in his dissenting opinion in which Mr. Justice DOUGLAS and Mr. Justice RUTLEDGE concurred pointed out that "Fortunately, this Court has not yet made a final and conclusive answer to petitioner's claim. . . . Nothing has been held which prejudices petitioner's right to proceed by way of habeas corpus in a federal district court, now that he has exhausted his state remedies. He may yet obtain the hearing which Alabama has denied him."

Thereupon, petitioner filed a verified petition for writ of habeas corpus in the United States District Court for the Middle District of Alabama (R. 1-5), and a rule to show cause was issued by that court. The Attorney General of the State of Alabama filed a pleading captioned "Return to Rule" (R. 8-9). This had the force and effect of a motion to dismiss and was so recognized by the court and the Attorney General of Alabama (R. 12). Under these circumstances, the allegations of the verified petition had to be accepted as true at that stage of the proceedings. A hearing was held on the verified petition and the motion to dismiss. Under normal procedure, such a hearing is limited to legal arguments and was so limited in this case. No pleadings were filed by the State of Alabama to bring to issue the allegations in the verified petition. It cannot be argued that at this stage of the proceeding, petitioner was obliged to or should have been prepared to produce testimony.

Orderly procedure permits testimony only after the respondent has made a full and complete return and has placed in issue the factual basis for the petition for writ of habeas corpus. The record in the original trial was not before the district court. Respondents had filed neither a return within the accepted meaning of that term, nor an answer, nor any denial of the factual basis for the petition.

The decision of the district judge was allegedly based upon the legal insufficiency of the petition and was admittedly determined by: (a) the verified petition, and, (b) the opinions of the Supreme Court of Alabama and of this Court in the *coram nobis* case.

In applying to this Court for a writ of certiorari petitioner relied upon principles of law which heretofore had been considered clear and well established:

a. Use by a state of a coerced confession to obtain a conviction for a crime is a violation of the due process clause of the Fourteenth Amendment.

Lee v. *Mississippi*, 322 U. S. 722;

Haley v. *Ohio*, 332 U. S. 596;

Malinski v. *New York*, 324 U. S. 401;

Ashcraft v. *Tennessee*, 322 U. S. 143;

Ward v. *Texas*, 316 U. S. 547;

Lisenba v. *California*, 314 U. S. 219;

Vernon v. *Alabama*, 313 U. S. 547;

White v. *Texas*, 310 U. S. 530;

Chambers v. *Florida*, 309 U. S. 227;

Brown v. *Mississippi*, 313 U. S. 547.

b. A habeas corpus proceeding in the Federal District Court is the proper method of attacking a conviction obtained in a state court in violation of defendant's constitutional rights, after the exhaustion of state remedies.

White v. *Ragen*, 324 U. S. 760;

Wade v. *Mayo*, 332 U. S. 672;

House v. *Mayo*, 324 U. S. 42;

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Ex parte Hawk, 321 U. S. 114;

Mooney v. *Holohan*, 294 U. S. 103;

Title 28, United States Code, Sections 2241-2255.

c. The allegations of a petition for habeas corpus in Federal courts must be taken as true in the absence of an answer or a hearing.

White v. *Ragen*, 324 U. S. 760;

House v. *Mayo*, 324 U. S. 42;

Williams v. *Kaiser*, 323 U. S. 471;

U. S. v. *Adams*, 320 U. S. 220.

d. The Federal District Court is under the duty to forthwith award the writ of habeas corpus, unless it appears from the petition itself that the party is not entitled thereto.

Holiday v. *Johnston*, 313 U. S. 342;

Price v. *Johnston*, — U. S. —; 92 L. ed. (Adv. Op.) 993;

Von Moltke v. *Gillies*, 332 U. S. 708;

Marino v. *Ragen*, 332 U. S. 561;

U. S. v. *Adams*, 320 U. S. 220;

Ex parte Quirin, 317 U. S. 1;

Walker v. *Johnston*, 312 U. S. 275;

Title 28, United States Code, section 2243 (then, 28 U. S. C. #461).

e. The prior proceedings in this case did not relieve the District Court of its duty to afford petitioner a hearing on the allegations of the petition for habeas corpus.

House v. *Mayo*, 324 U. S. 42;

Waley v. *Johnston*, 316 U. S. 101.

These principles of law heretofore considered clear and well established are inextricably involved in this case. The decision by an equally divided court has cast grave doubt and confusion upon these principles.

The case was placed on the summary docket, thereby limiting argument to one-half hour by one attorney. This Court denied the request of attorneys for petitioner that two attorneys be permitted to argue the case for a half hour each. The respondent did not appear for argument so that the entire argument was limited to one-half hour.

Less than a week after argument, the Court entered its *per curiam* decision, affirming the judgment by an equally divided court in this, "a matter of life and death, a matter of constitutional importance". (Mr. Justice MURPHY in dissenting opinion.)

This case imperatively requires rehearing and final disposition of the case by majority vote of this Court. This case reached the Court by petition for certiorari, not on appeal. The review thus came to petitioner because a sufficient number of this Court deemed the specific questions presented to be of sufficient general importance to require decision by this Court. The *per curiam* order of affirmance by an equally divided court fails to supply that decision. Instead it leaves the law of this case in a state of confusion and casts doubt on the applicability of the principle involved to other cases.

For many decades, the practice has been followed, whenever practicable, of having questions of the nature involved in this case heard by the full court so that a judgment therein might be by a majority of the Court. *Brisko* v. *Commonwealth Bank of Kentucky*, 33 U. S. (8 Pet.) 118; *New York* v. *Millan*, 33 U. S. (8 Pet.) 120; *Home Ins. Co. of New York* v. *New York*, 119 U. S. 129, 148; 122 U. S. 636; 134 U. S.

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594; *Polack* v. *Farmers Loan and Trust Co.*, 157 U. S. 429, 586; 158 U. S. 601.

Mr. Justice BLACK did not participate in either the hearing of argument or the decision in this case, and we respectfully submit that for the reasons set out above, a rehearing should be granted in this case in order to give to Mr. Justice BLACK an opportunity to reconsider his position in the light of the equally divided Court so that the doubt and confusion as to the principles of law involved may be resolved one way or the other. The precedent for such action has been recognized in the case of *Hirota* v. *General MacArthur*, 93 L. ed. (Adv. Op.) 119 and the granting of a rehearing in the case of *Marzani* v. *United States*, — U. S. —, 93 L. ed. —.

The opinion of this Court in the first *Taylor* case did not pass upon the constitutional question as to whether or not the conviction of Samuel Taylor was based upon a denial of due process of law. The decision of this Court in the instant case leaves this question as well as the procedural question in doubt. Unless these points are clearly decided in this case they can never be decided. There is now no other judicial remedy open to petitioner to prevent his death by electrocution.

The *per curiam* order of the Court in this case does not disclose the reasons for Mr. Justice BLACK's nonparticipation. Whatever they may be, petitioner is convinced that if upon reconsideration Mr. Justice BLACK were to agree to hear and participate in the decision of this case, petitioner would thereby be afforded a full and complete hearing and the possibility of a definitive determination of the issues in this case so as to remove the doubt now existing as a result of the present *per curiam* order. If Mr. Justice BLACK sits and hears argument on this case it might not be necessary for him to participate in the final decision in order to

have a majority decision. In the *Hirota* case, Mr. Justice JACKSON while agreeing to hear argument did not participate in the final determination of the case because a majority decision was possible without his participation.

Prior to the decision in this case the law was clear that, after state remedies had been exhausted by a petitioner without a hearing on the merits of claimed violations of the Constitution, United States District Courts were prohibited from dismissing a petition for habeas corpus sufficiently alleging facts to show such constitutional violation without a hearing on the merits. *Ex Parte Hawk, supra,* and *White* v. *Ragen, supra,* and as modified by *House* v. *Mayo, supra,* and *Wade* v. *Mayo, supra.* The order of this Court in the instant case leaves an unresolved doubt, therefore as to the present availability of habeas corpus upon the exhaustion of state remedies in the process of which no hearing on the merits was given. This doubt is particularly strong when the opinion of the District Court herein and the opinion of this Court in *Taylor* v. *Alabama* are considered together.

The order of this Court creates doubt concerning the principle of the truth of uncontroverted facts in a Petition for Writ of Habeas Corpus. From an examination of the cases *Walker* v. *Johnson, supra; Waley* v. *Johnston, supra; Holiday* v. *Johnston, supra; Johnson* v. *Zerbst,* 304 U. S. 458; *Smith* v. *O'Grady,* 312 U. S. 329, it was clear that the uncontroverted facts in a petition for writ of habeas corpus to a federal court must be taken as true in the absence of an answer or a hearing. In response to the rule to show cause in the Court below, the State of Alabama did not submit an answer nor was a hearing granted upon the facts of the petition by the Court. There can be no question but that the allegations of such petition, if true, sufficiently set forth facts constituting a violation of constitutional rights by a state court in the trial of the petitioner. The District

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Judge, however, upon receipt of a motion to dismiss, which, for all intents and purposes admits the truth of such allegations, refused to accept the allegations as true and without more concluded rather "that a *further* hearing is not required by the Constitution of the United States". (Italics ours.)

The Court's *per curiam* order of February 7, it is submitted, places an unwaranted effect upon the decision in *Mooney* v. *Hollahan, supra,* insofar as that case requires that state courts, equally with federal courts, provide a remedy whereby one claiming to have been convicted in violation of basic constitutional rights may have such claim judicially tested. The effect of the order of affirmance of this Court is to give the courts of Alabama the sole jurisdiction for entertaining such applications according to Alabama's *coram nobis* standard.

The order of the Court in effect further completely bars the remedy of and the standards of habeas corpus in the federal courts in all circumstances to any person detained by authority of an Alabama state court after disposal of petition for permission to file for *coram nobis.* The order further gives sanction to the Alabama *coram nobis* practice of requiring a petitioner to prove his innocence as a prerequisite to obtaining a hearing on his claim of violation of constitutional rights. Clearly, as pointed out in petitioner's brief and in argument before the Court, no such rule had heretofore existed in the federal courts.

The order of the Court further gives sanction to Alabama's practice of speculating on the verity of the allegations of a petition for *coram nobis.* While it may be admitted that Alabama has the right to set up such procedure as it may deem appropriate subject to the limitations of due process for the consideration of claims such as the one which petitioner makes, it is submitted that the intent of the *Mooney* v. *Hollahan* doctrine was not to bar completely

the right to federal habeas corpus by a state prisoner, unless he had obtained in the state court, through habeas corpus, *coram nobis* or other similar procedure, a hearing on the merits of his petition according to the standards which prevail in the federal courts on habeas corpus.

In *Waley* v. *Johnston*, 316 U. S. 101, 104, this Court stated: "True, petitioner's allegations in the circumstances of this case may tax credulity. But in view of their specific nature, . . . and the failure of respondent to deny . . . them specifically, we cannot say that the issue was not one calling for a hearing within the principles laid down in *Walker* v. *Johnston*, 312 U. S. 275, 85 L. Ed. 830, 61 S. Ct. 574. . . . If the allegations are found to be true, petitioner's constitutional rights were infringed."

The decision of the District Court denied a hearing on the merits and dismissed the petition on the grounds that the issues had been disposed of in the *coram nobis* proceedings. Thus, instead of applying the standards for disposition of habeas corpus proceedings in federal courts the District Court substituted the contrary standards for state court determination of *coram nobis* applications. The factual basis of the *coram nobis* proceedings was determined by the decision.

The decision in this case now affirmed by an equally divided court cannot be rationalized with the former opinion of this Court in the *coram nobis* proceeding. There are several clear principles of law involved in this decision which cannot be rationalized with existing decisions.[1] The equally

[1] In a note concerning reversals by memorandum opinions it has been stated that "An opinion is a check on 'administrative justice' and doubtful reasoning. It makes possible the thoughtful extension, limitation or correction of doctrine in subsequent cases. It is a guide, in the present instance much needed, to counsel and inferior courts. It is a mark of respect in case of reversal, for the court reversed. It is submitted that in cases like the present, there are grave objections to the Court's departure from its practice of delivering opinions." *A Memorandum Decision*, 40 Harv. L. Rev. 485, January, 1927.

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divided court and the lack of opinion thereby casts doubt upon these principles of law. The present decision in this case and the resultant confusion will increase rather than decrease the applications to this Court for certiorari from decisions of district courts.

The effect of the Court's order is to completely bar petitioner's right to a hearing with compulsory process and right of cross examination in any judicial forum. Such a consequence, it is submitted, is in and of itself a denial of due process.

It cannot be said that petitioner's claims are without merit. There was a vigorous dissenting opinion in the Alabama Supreme Court and in this Court on the *coram nobis* proceeding. If petitioner is now electrocuted there will always be grave doubt as to whether or not his life was taken without due process of law. Our Constitution requires that due process of law be afforded at every step of our judicial proceedings. Is it not more in keeping with our principles to grant a full and complete hearing of this petitioner's claim of denial of rights guaranteed by our Constitution?

Conclusion

Petitioner has been seeking a hearing of his claim that his conviction is in violation of the United States Constitution—a hearing within the accepted meaning of the word. If he had been granted such a hearing the entire matter would have been disposed of. If his claims were so unbelievable the State of Alabama would not have opposed such a hearing at every stage of both proceedings.

We are not unaware of the large number of petitions for writs of habeas corpus in federal courts. On the other

hand, we are certain that the present decision by an equally divided court will increase rather than decrease applications to this Court for review of such cases.

Where a man's life is at stake and constitutional rights are involved his life should not be taken as the result of a decision by an equally divided court based upon a half hour argument.

WHEREFORE, petitioner prays that this Court grant to petitioner a re-hearing by having the case placed on the regular docket for a full hearing. Petitioner further prays that Mr. Justice BLACK reconsider his reasons for not participating in this case and in the light of the equally divided court that he participate in the hearing of argument and if necessary the final decision of the case.

Counsel represents to the Court that this petition for re-hearing and other relief is not filed for the purpose of delay.

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